Supreme Judicial Court of New Hampshire.

NASHUA LOCK COMPANY *v.* WORCESTER AND NASHUA RAILROAD COMPANY.

Where several common carriers are associated in a continuous line of transportation, and in the course of the business, goods are carried through the connected line for one price under an agreement by which the freight-money is divided among the associated carriers, in proportions fixed by the agreement; if the carrier at one end of the line receives goods to be transported through marked for a consignee at the other end of the line, and on delivery of the goods takes pay for transportation through, the carrier, who so receives the goods, is bound to carry them, or see that they are carried, to their final destination, and is liable for an accidental loss happening in any part of the connected line.

ASSUMPSIT to recover for ten cases of locks. Plea, the general issue. The cause was submitted on the following agreed state of facts:—

The cases were marked for Wiesbushhabatt & Co., New York, and were delivered to the defendants, as freight, at Nashua, N. H., to be transported over their road from Nashua to Worcester, Massachusetts, and there delivered to the Norwich and Worcester Railroad, to be forwarded by the usual course of transportation to New York city, and the entire freight from Nashua to New York was paid by the plaintiffs to the defendants.

The defendants are a corporation in New Hampshire and Massachusetts, owning and operating a railroad between Nashua and Worcester, which forms a connection with the Norwich and Worcester Railroad and the line of steamers across Long Island Sound to New York from Norwich, Connecticut, known as the "Norwich and New York Transportation Company." The road of the defendants extends from Nashua to Worcester; the road of the Norwich and Worcester Railroad extends from Worcester to New London, from which point the boats of the Steam Boat Company run to New York. The defendants are accustomed to receive freight at Nashua destined and directed to New York and to deliver it to the Norwich Railroad as aforesaid. By an arrangement among these corporations the price paid for freight forwarded from Nashua to New York over the line is divided among them in accordance with an agreement.

The cases were forwarded by the defendants and by the Norwich and Worcester Railroad and delivered to the Transportation Company, and by them put on board the steamer "City of Norwich," which came in collision with a sailing-vessel on the Sound, took fire, and with the cargo, including the ten cases, was consumed. The value of the steamer has been ascertained, and a *pro ratâ* share assigned to the plaintiffs, who have declined to accept it. In case judgment should be for the plaintiff, the value of the goods lost is to be determined by an auditor.

A. W. Sawyer, for the plaintiffs.

G. Y. Sawyer, for defendants.

PERLEY, C. J.—According to the agreed case the three corporations,

the Worcester and Nashua Railroad, the Norwich and Worcester Railroad, and the Norwich and New York Transportation Company, were engaged as common carriers in the business of transporting goods between Nashua and New York in a continuous line under an agreement by which they divided the price paid for transportation through in proportions fixed by the agreement. The agreement is not before us; but from the general statement of it in the case it must be inferred that the parties to it were mutually bound to transport goods on their connected line according to the direction given by the owner, when they were received for transportation in the usual course of the business by any one of the parties. In this case it would have been a violation of the agreement among the parties to the continuous line, if either the Norwich and Worcester Railroad or the Transportation Company had refused to receive and transport the goods towards their destination in the usual course of the business as they were marked and directed when they were received by the defendants.

The contract between the plaintiffs and defendants must be implied from the facts stated in the agreed case. There was no special agreement, written or oral, that the goods should be carried to New York, nor that the responsibility of the defendants should end on delivery to the Norwich and Worcester Railroad. The general question is whether the defendants undertook for the transportation of the goods through to New York, or only agreed to carry and deliver, or tender, them to the Norwich and Worcester Railroad.

Had the defendants corporate authority to contract for the transportation of the goods beyond their own line? We have no hesitation in holding that railroads may contract to carry goods and passengers beyond their own lines. They could not answer the main objects of their incorporation without the exercise of this power. They are laid out and established with reference to connections in business with other extended lines of transportation, and the power to contract for transportation over the connected lines is implied in the general grant of corporate authority. On this point the authorities are nearly unanimous. It has been held otherwise in Connecticut by the opinion of three judges against two: *Hood* v. *N. Y. & N. H. Railroad*, 22 Conn. 1; *Elmore* v. *The Naugatuck Railroad*, 23 Conn. 457; *The Naugatuck Railroad* v. *The Button Company*, 24 Conn. 468. But in a later case, *Converse* v. *The Norwich & N. Y. Transportation Company*, 33 Conn. 166, the court in that state have shown some disposition to recede from the doctrine of their earlier cases. No other authorities are cited by the defendants to this point, and I have found no others that sustain their view of this question. The authorities the other way are numerous and decisive: *Muschamp* v. *The Lancaster & Preston Railway*, 8 M. & W. 421; *Weed* v. *The S. & S. Railroad*, 19 Wend. 524; *The F. & M. Bank* v. *The Ch. Transportation Company*, 23 Vermont 186; *McCluer* v. *M. & L. Railroad*, 13 Gray 124; *Rogers* v. *R. & B. Railroad*, 27 Vermont 110; *Wilcox* v. *Parmelee*, 3 Sandf. 610; *Perkins* v. *The P. S. & P. Railroad*, 47 Maine 573; and railroads may contract for transportation beyond the limits of the states in which they are established: *McCluer* v. *The M. & L. Railroad*, 13 Gray 124; *Burtis* v. *B. & S. L. Railroad*, 24 New York 369; and when a railroad makes a contract for transportation beyond its own line it will be presumed

that it had authority to do it: *McCluer* v. *M. & L. Railroad*, 13 Gray 124.

In the agreed case it is said the goods were received to be *forwarded*, &c., and from this phrase an argument is drawn that the agreement of the defendants was to forward to the next party in the line and not to carry through to New York. But here was no express agreement in any particular terms, and we are not called on to interpret the language used in any contract. The nature of the undertaking must be inferred from the facts stated in the agreed case, and cannot be determined by the phrase used in stating them. Even in a written contract, where the term *forwarded* is used, if the thing to be done belongs to the business of a carrier, he will be charged as such. In *Wilcox* v. *Parmelee*, 3 Sandf. 610, the court say: "The criticism of the defendant on the word *forwarded* used in the contract is not just. It applies to the whole distance, as well to those portions of the route where other parties were owners of the vessels, as to that portion where he employed his own means of transportation. He was to forward the goods from New York to Fairport, not to Buffalo, which he now says was the terminus of his own immediate route. The words used by him can only mean that he was to carry or transport the goods, and whether in his own vessels or in those of others was perfectly immaterial to the plaintiff." In *Schroeder* v. *The Hudson River Railroad*, 5 Duer 55, the defendants gave a receipt for goods "to be *forwarded* per Hudson River Freight Train to Chicago;" and under this receipt it was held that the defendants were bound to *carry* the goods to Chicago. So, in the recent case of *Buckland* v. *The Adams Express Company*, 97 Mass. 124, the defendants were charged as common carriers, though they described themselves in the contract under which they received the goods, as "Express Forwarders." In the present case the undertaking of the defendants must be implied from the facts stated in the agreed case, and the particular language used in stating them is of no materiality.

Since the introduction of steam as the means of transportation by land and water, the general question raised in this case has been much considered in different jurisdictions, and there is no little confusion and contradiction of authority respecting the rule which shall govern the rights and liabilities of the parties, where goods are put in the course of transportation to distant places through connected lines associated in the business of common carriers. Where such lines are engaged in carrying passengers and their luggage the several parties to the continuous line incur, it would seem, the same liabilities for damage and loss of the luggage as in cases where they carry goods only: *Darling* v. *The Boston & Worcester Railroad*, 11 Allen 295; *Quimby* v. *Vanderbilt*, 17 New York 312; *Weed* v. *The Railroad*, 19 Wend. 534; *The Ill. Central Railroad* v. *Copeland*, 24 Ill. 332; *Ill. Central Railroad* v. *Johnson*, 34 Ill. 382.

In England and in several of the United States, it has been held that when a railroad or other common carrier receives goods marked or otherwise directed for a place beyond the carrier's own line, this alone is *primâ facie* evidence of a contract to carry the goods to their final destination, though the freight money for transportation through is not paid to the carrier that receives the goods, and though he is not shown to have any connection in business with other parties beyond his own

line: *Muschamp* v. *The Lancaster and Preston Railway*, 8 M. & W. 421; *Watson* v. *The Ambergate, Nottingam and Boston Railway*, 3 Law & Equity 497; *Collins* v. *The Bristol and Exeter Railway*, 11 Exchequer 790, s. c., 7 House of Lords Cases 194; *Coxon* v. *The Great Western Railway*, 5 Hurlstone & N. 274. These and several other cases show that in England, after the fullest discussion in all the courts, the rule is firmly established that a carrier who receives goods marked for a place beyond his own line is *primâ facie* bound to carry them as directed to their final destination, and it is there held that the contract in such case is entire, and with the first carrier alone; that until some connection in the business, which has the general nature, if not the technical character, of a partnership, appears between him and the subsequent carriers, no action can be maintained against them by the owner, though the goods were lost or damaged on their part of the route.

I have not met with an American case, in which the rule has been pressed to the extent of holding that the owner cannot come on any carrier, by whose default the loss or damage actually happened. There are, however, numerous authorities in the United States for the general rule of *Muschamp* v. *The Railway*, that the receipt of goods marked for a place beyond the line of the carrier who receives them, implies a contract to carry them to their final destination, though no connection in business is shown with other carriers beyond, and though the price for transportation through is not paid in advance.

In *Foy* v. *The Troy & Boston Railroad*, 24 Barb. 382, the doctrine of the case is stated in the head note to be that "where a railroad company receives for transportation property addressed to a person at a point beyond the terminus of the road, he will be understood, in the absence of any proof to the contrary, to have agreed to deliver the property in the same order and condition in which it was received, to the consignee." The court say, "it was no part of the plaintiff's business to inquire how many different corporations made up the entire line of road between Troy and Burlington, or, having ascertained this, to determine at his peril, which of said companies had been guilty of the negligence which resulted in the injury to his wagon." In *Schroeder* v. *The Hudson River Railroad*, 5 Duer 55, the agent of the defendants gave the following receipt at New York: "Received of Schroeder six boxes—to be forwarded per Hudson River Railroad freight train to Chicago, Illinois;" and it was held that the defendants under this receipt were bound to transport the goods to Chicago. No connection in business with other carriers was relied on. In *Kyle* v. *The Laurens Railroad*, 10 Rich. (Law) 282, the rule of *Muschamp* v. *The Railway* was approved. O'NEALL, J., says: "The case of *Muschamp* v. *The Lancaster & Preston Junction Railway* states, I think, the true rule." The rule of *Muschamp* v. *The Railway* was approved and adopted in the *Central Railroad* v. *Copland*, 24 Illinois 332, in which it was held that "a railroad corporation selling tickets through over its own and other roads is liable for the safety of passengers and their baggage to the point of destination." The case was put on the same ground as when goods are received marked for a place beyond the line of the carrier that receives them. The court say: "We are inclined to yield to the force of the reasoning of the English courts, on principles of public conveni-

ence, if no other, and to hold when a carrier receives goods to carry marked for a particular place, he is bound to carry and deliver at that place. By accepting the goods so marked he impliedly agrees so to do, and he ought to be answerable for that loss." In the later case of *The Central Railroad* v. *Johnson*, 33 Illinois 382, it was decided in the same state that "when a carrier receives goods to carry marked for a particular place, he is bound under an implied agreement from the mark or direction to carry to and deliver at that place, though it be a place beyond his own line of carriage." In *The Detroit & Milwaukee Railroad* v. *The F. & M. Bank*, 20 Wis. 122, the railroad gave a receipt for the goods directed to New York, but the receipt provided that the railroad should not be liable beyond their own road, and it was held that by an express agreement a carrier might limit his liability to his own road, when he receives goods marked for a place beyond it. The road was in that case discharged upon the ground of an express agreement that it should not be liable beyond its own line, from which the inference is plain that, in the absence of an express agreement controlling the contract otherwise implied from the receipt of the goods marked for a place beyond its line, the road will be liable for a loss happening beyond. In *Angle* v. *The Mississippi & Missouri Railroad*, 9 Iowa 487, it was decided that "when a common carrier receives goods marked for a particular place beyond the *terminus* of his route, unaccompanied by any direction as to their transportation and delivery except such as may be inferred from the marks, he is *primâ facie* bound to carry and deliver them according to the marks."

St. John v. *Van Santvoord*, 25 Wend. 660, is a strong authority for the rule that when goods are received by a carrier marked for a place beyond his line, he is bound to carry them to their final destination, if there is nothing to control the contract implied by the receipt of the goods so marked. NELSON, C. J., delivering the opinion of the court, says: "It appears to me such a contract is fairly to be inferred from the receipt of the captain in the absence of any explanation. The box was directed to J. Petrie, Little Falls, Herkimer county, indicating plainly to whom the plaintiffs were desirous of sending it, and was delivered on board for the express purpose of transhipment to him; and without any qualification or explanation the agent received the article and gave his receipt, in effect saying to the plaintiff, I will take and deliver it at the place of destination according to the direction. So the plaintiffs must have understood the contract. It is the plain interpretation of the transaction. If the defendants had intended to limit their duty as common carriers short of the place of destination, they should in some way have indicated to the plaintiff this intent." The judgment of the Supreme Court in this case was reversed by the Senate, 6 Hill 157, upon the ground that the court should have received evidence of a custom controlling the general effect of the receipt of the goods marked for the place of destination, though the custom was not known to the plaintiff; leaving the doctrine untouched that the receipt of the goods so marked in the absence of evidence to explain and control the transaction would imply an agreement to carry to the place for which they were marked.

The American authorities above cited sustain the doctrine of *Muschamp* v. *The Railway*, that when a carrier receives goods marked for

a place beyond his own line, he is, *primâ facie* and in the absence of other evidence, bound by an implied contract to carry the goods to the place for which they are marked, though he has no connection in business beyond his own line and though he does not receive pay for transportation through.

There is another class of American cases which hold that the mere receipt of goods marked for transportation beyond the line of the party that receives them is not evidence of a contract to carry beyond his own line, if he has no connection in business with carriers beyond; but that, if several carriers associate in a continuous line, carry goods for one price through, and divide the freight-money among them in an agreed ratio, though they may not be technically partners, but only *quasi* partners, yet as to third persons who intrust goods to them for transportation they are jointly liable for a loss that happens in any part of the continuous line, though the freight-money is not paid to the first carrier on delivery of the goods to him.

In *Champion* v. *Bostwick*, 11 Wend. 571, s. c., 18 Id. 174, several proprietors of different sections in a connected line of stage coaches divided the receipts of the whole route in proportion to the miles run by each; and it was held that they were jointly liable as partners for an injury to a third person, not a passenger, caused by the negligence of one of them. It is to be observed that in this case the receipts of the way as well as the through travel were brought into the account; and on this, a distinction has been taken between that case and one where the receipts of the through travel only are divided; and for that reason it has been said that in a case like the present there is no partnership and no joint liability. But as to parties who deal with the through line, it is of no consequence how the other business is managed, or whether any other business is done by the associated carriers. At most the distinction is merely technical and has no substance. Nor am I acquainted with any legal principle to prevent one engaged in a general business from having a partner in one distinct part of it, like the through business in this case, without bringing all his business of the same kind into the partnership account. I take it to be no uncommon thing for a trader to have a partner in his business done at one place, who has no concern in his business of the same kind transacted at other places; for attorneys to form partnerships limited to certain parts of their business, and merchants, in the voyages, or in a single voyage, of one ship.

Hart v. *The Rensselaer & Saratoga Railroad* is to the point that "where three separate railroad companies owning distinct portions of a continuous railroad route between two termini run their cars over the whole road, employing the same agents to sell passenger tickets, and receive luggage to be carried over the entire road, an action may be maintained against any one of them for loss of luggage received at one terminus to be carried over the whole road." SMITH, J., delivering the opinion of the court in *McDonald* v. *The Western Railroad*, 34 New York 501, 502, says: "We may judicially take notice of the fact that the vast business of inland transportation of goods is carried on mainly upon routes formed by successive lines belonging to different owners, each of whom carries the goods over his own line and delivers them to the next. Many of these routes extend over thousands of

miles. Their proprietors unite and receive goods for transportation *upon the promise express or implied* that they shall be carried safely to the place of delivery. The owner has lost sight of his goods when he delivers them to the first carrier and has no means of learning their whereabouts till he or the consignee is informed of their arrival at the place of destination."

In *Wibert* v. *The Erie Railroad*, 12 New York 256, it was said that "where a carrier is in the habit of receiving and forwarding goods directed to any particular place, an agreement on his part to take them there has been presumed; but where these operations are entirely disconnected, there is no partnership." In *Bradford* v. *The Railroad Company*, 7 Rich. (Law) 201, it was held that "an advertisement of a through line and the course of the business is evidence to charge all the roads engaged in the continuous line of transportation as jointly liable for carriage through the whole route." REDFIELD, C. J., in delivering the opinion of the court in *The F. M. Bank* v. *The Transportation Company*, 23 Vermont 131, speaking of *Weed* v. *The S. & S. Railroad*, 19 Wend. 534, says, "that case is readily reconciled with the general rule that such carrier is only bound to the end of his own route, by the consideration that in this case there was a *kind of partnership connection* between the first company and the other companies constituting the entire route, and also that the first carrier took pay and gave a ticket through, which is most relied on by the court; and in such cases where the first company gives a ticket and takes pay through it may be fairly considered equivalent to an undertaking to carry throughout the entire route." In a note to this case by REDFIELD, C. J., he says, "in that case (*Weed* v. *The Railroad*) the court seem to put the case more upon the fact of taking fare and giving a ticket through, which in practice is seldom or never done except where there is a *quasi partnership* throughout the route." This would seem to be a strong authority that where there is a connected line of carriers, and a *quasi*, though it may not be technical and legal partnership, they are liable jointly for carriage through the whole connected route.

By the statute of New York, enacted in 1847, "whenever two or more railroads are connected together any company owning either of said roads receiving freight to be transported to any place in the line of either of said roads shall be liable as common carriers for the delivery of such freight at such place." This statute has received a liberal construction and been held to make a railroad in New York liable for a loss on a road in the connected line beyond the limits of the state: *Burtis* v. *The Buffalo and State Line Railroad*, 24 New York 269; but not to discharge an intermediate carrier for loss caused by his own fault: *Smith* v. *The N. Y. Central Railroad*, 43 Barb. 225.

In *The Cincinnati H. & D. Railroad* v. *Speat*, 2 Duval 4, it was decided that "where several parties are associated for the transportation of freight from Louisville to New York, executing through bills of lading and charging through freight, they will be chargeable as common carriers between those points; and in such cases public justice and commercial policy require a stringent construction against any intermediate irresponsibility as common carriers." Two points were decided in this case: that the defendants were liable as common carriers for transportation through to New York; and that on the facts of the case they held

the goods as common carriers and not as warehousemen. The court say: "The facts conduce to prove that the appellants, associated as they were with steamboats and other carriers from Louisville to Cincinnati as joint transporters between those points, and jointly charging through freight and giving through receipts, were in the popular and technical import common carriers to the whole extent between those termini." This reasoning applies with full force to the present case.

In 2 Redfield on Railways 104, the learned author sums up the result of the American cases on this particular point as follows: "The American cases upon the subject, with rare exceptions, recognise the right of a railroad company to enter into special contracts to carry goods beyond the line of their road; and *where different roads are united in one continuous route* such an undertaking, when goods are received and booked for any part of the line, is almost a matter of course." In the present case the defendants were united in a continuous line to New York; the goods were received *marked*, which must be equivalent to *booked*, for New York; and the case would seem to fall clearly within the rule laid down in Redfield as the result of the American authorities.

There is still another class of cases, in which it is held that the fact of a carrier's receiving pay for transportation to a place beyond his own line implies a contract to carry to that place. In the case of *Hyde* v. *The Trent & Mersey Navigation Company*, 5 T. R. 389, decided in 1793, the marginal note is as follows: "Common carriers from A to B, charge and receive for cartage to the consignee's house at B from a warehouse there, where they usually unloaded, but which did not belong to them; they must answer for the goods if destroyed in the warehouse by an accidental fire, although they allow all the profits of the cartage to another person, and that circumstance were known to the consignee." The four judges delivered their opinions seriatim and all agreed that the charge for cartage to the house of the consignee "put the case out of all doubt," and bound the carriers who made the charge, to carry the goods to their final destination. In answer to the argument that the carriers acted as agents of the owner in forwarding the goods beyond their own line, Mr. Justice BULLER said: "According to the defendants' own argument great inconvenience would result to the public from adopting the other rule. According to their argument there must be two contracts, where goods are sent by coach or wagon. But I think the same argument tends to establish the necessity of three; one with the carrier, another with the innkeeper, and a third with the porter. But in fact there is but one contract; there is nothing like any contract or communication between any other person than the owner of the goods and the carrier. But I rely on the charge which the defendants compelled the plaintiff to pay before they would engage to deliver the goods. The different proprietors may divide the profits among themselves in any way they choose, but they cannot exonerate themselves from their liability to the owner of the goods." This case, coming before the agitation of these questions on the introduction of steam as a motive power, and decided on the general principle applicable to the liability of carriers at common law, is certainly of very great weight. It decides that when a carrier receives goods to be transported beyond his own line and takes pay for carrying them to their final destination,

he agrees to do what he has been paid for doing; and it repudiates the fanciful theory of an agency for the owner to forward the goods and in his behalf procure them to be carried by others.

In *Weed* v. *The Saratoga & Schenectady Railroad*, 19 Wend. 534, the plaintiff's agent took passage at Saratoga in the Saratoga & Schenectady Railroad for Albany and paid his fare to Albany. The route to Albany consisted of the defendants' and the Mohawk & Hudson River Railroad. When the agent arrived at Albany his trunk containing money of the plaintiff was missing, and this action was brought to recover for the loss. One ground taken for the defendants was that there was no evidence the trunk was lost on their road. There was no evidence of a contract to carry to Albany except such as was implied from the fact that the two roads made a continuous line to Albany, and the defendants took the trunk for carriage to Albany and received the pay for carrying through. It was held that the payment and receipt of fare through bound the defendants as carriers over the other road through the whole continuous route.

Wilcox v. *Parmelee*, 3 Sandf. 610, is an authority to the same point, that receiving pay for transportation to a place beyond the line of the carrier who receives it, implies a contract to carry to that place. The court say: "Besides, there is a fixed sum which covers the whole charge; and it would be absurd to suppose that the defendant was to receive the whole sum for merely forwarding, that is, placing the goods on the vessels of some other party to be carried to their place of destination."

Van Santvoord v. *St. John*, 6 Hill 157, cited for the defendants, recognises the doctrine of *Weed* v. *The Railroad*. In his opinion for reversing the judgment of the Supreme Court, the Chancellor says: "In the case of *Weed* v. *The Railroad* the two lines were connected together by an arrangement between themselves, and the agent of the defendant took the pay in advance for the conveyance of the plaintiff and his baggage the whole distance. Or, if no actual connection between the two lines was proved, it at least appeared that the defendant permitted its agent to hold it out as a carrier of passengers and their baggage for the whole distance *by taking pay therefor*." It thus appears that in *Van Santvoord* v. *St. John*, as in *Hyde* v. *The Navigation Company*, taking pay for carriage to a place beyond the line of the party that takes it, is regarded as decisive of an undertaking to carry to that place. *Quimby* v. *Vanderbilt*, 17 New York 315, is to the same point, that receiving pay for carriage through a continuous line imports a contract to carry through; and in *Burtis* v. *The Buffalo and State Line Railroad*, 24 New York 269, 278, SUTHERLAND, J., says: "It would appear to be settled by both the American and English cases that when from usage in the particular business, or *by receiving pay to the place* to which the goods are addressed, beyond the railway company's road, or from any other circumstance, it is to be presumed that the undertaking of the railway was to deliver at such place, they are responsible for the delivery of the goods at such place, and are liable if the goods are lost after leaving their road."

In *Choteaux* v. *Leach*, 18 Penn. St. Rep. 224, furs were shipped at Cincinnati for New York. The defendants admitted that they were carriers on the canals and railroads of Pennsylvania, but denied that

they were on the river Ohio. The furs were lost in a steamboat on that river. The court (BLACK, C. J.) say: "They, the defendants, received the full freight from Cincinnati to New York; and this is wholly inconsistent with the notion that they were agents for the shipment of the furs, and not carriers from Cincinnati to Pittsburgh, as well as on other parts of the route." To the same point is *The Baltimore & Philadelphia Steamboat Company* v. *Brown*, 54 Penn. 77, which cites and approves *The Illinois Central Railroad* v. *Copeland*, 24 Illinois 338; *The Illinois Central Railroad* v. *Johnson*, 34 Illinois 382, and *The Railroad* v. *Schwartzenburg*, 9 Wright 208. So in *Candee* v. *The Pennsylvania Railroad*, 21 Wis. 582, where a railroad sells a through passenger ticket by a specified route to some point out of the state over lines belonging to other companies, it seems the understanding of the first company is to transport the passenger and his baggage to such place of destination. *Carey* v. *The Cleveland & Toledo Railroad*, 29 Barb. 36, is to the same effect, and also *The Illinois Central Railroad* v. *Copeland*, 24 Illinois 332, in which it was held that a railroad selling tickets through over its own and other roads is liable for the safety of passengers and their baggage to the point of destination. *Wheeler* v. *The Railroad*, 31 Cal. 52, cites and apparently approves the doctrine as laid down on this point in 2 Redfield on Railways 109. In *Carter* v. *Peck*, 4 Sneed (Tenn.) 203, the defendants received fare and gave a ticket to a point beyond their own line; it was held that they were liable for a detention beyond their own line. HARRIS, J., delivering the opinion of the court, says: "When the defendants received the plaintiff's money and gave him a through ticket, they thereby became bound for his transportation over the entire line. The arrangement between the defendants and the proprietors of other portions of the line was a matter with which the plaintiff had nothing to do. He was no party to that arrangement, nor was he bound to look to any person for the performance of the defendant's undertaking but themselves."

Redfield (Railways 109) sums up the result of the authorities on this point as follows: "It has generally been considered, both in this country and in the English courts, that receiving goods destined beyond the terminus of the particular company and giving a check or ticket through does import an undertaking to carry through, and that this contract is binding on the company."

Then, again, there are American cases which maintain the doctrine that, though carriers are associated in a continuous line, and one of them, on receiving goods marked for transportation through, takes pay for transportation through, which by agreement of the parties to the continuous line is divided among them in a fixed proportion, yet, in the absence of a positive agreement, each carrier is liable for loss on his own line, and not for a loss on any other part of the connected line.

This appears to be the settled rule in Connecticut. In *Hood* v. *The New York & New Haven Railroad*, 22 Conn. 1, the defendants' road was connected with a line of stage coaches which runs from their terminus to Coleville; and they advertised that passengers by their line went by stage from Farmington to Coleville. The plaintiff bought a ticket of the defendants at New Haven for Coleville. The conductor on the said road took up the plaintiff's ticket and gave him one for the stage. The plaintiff was injured on the stage route. The whole fare

through was paid to the defendants, and they accounted on settlement with the proprietors of the stage line, and this was according to the custom of the business. There was no other contract between the stage company and the railroad. It was held that there was no contract by the defendants to carry the plaintiff on the stage route. The decision would seem to have been put mainly on the ground that the defendants had no corporate authority to contract for carriage beyond their own line. In *Elmore* v. *Naugatuck Railroad*, 23 Conn. 457, it was decided that neither the receiving of goods directed to a point beyond the line of the road, nor an advertisement of the general facilities of transportation through the route is evidence of a special contract to carry goods to the place to which they were directed. *The Naugatuck Railroad* v. *The Button Company*, 24 Conn. 468, is to the same effect; and in the later case of *Converse* v. *The Norwich and Worcester Transportation Company*, 33 Conn. 166, the court consider the question as settled in Connecticut.

In Maine a single case is cited by the defendants, *Perkins* v. *The P. S. & P. Railroad*, 47 Maine 573 (and I have found no other in that state bearing on the present question), the head note of which is as follows: "A railroad company may be bound by special contract (but not otherwise) to transport persons or property beyond the line of their own road." It is to be observed that in this case of *Perkins* v *The Railroad*, the plaintiff had judgment, on the ground of a special contract; from which the negative inference is drawn that the plaintiff could not recover otherwise than by a special contract. This cannot be regarded as quite equivalent to a direct decision on the point; for if the point was raised in the case it certainly did not require the court to determine whether a special contract was necessary to charge the defendants, and besides there is reason to think that the term "express contract" could hardly have been used in its strict sense to signify a contract in the form of a direct promise or undertaking in language, oral or written, proper to show a positive agreement; since the judge, who delivered the opinion of the court, speaks of a case where the carriers would be liable on the ground that they "held themselves out as common carriers to that place;" in which case, as I understand it, the contract would not be express, in the strict or usual sense of the term, but implied from the conduct of the party. And the same learned judge also says: "It is of great public convenience, if not absolute necessity, that several companies should combine their operations, and thus transport passengers and merchandise by a mutual arrangement over all their lines, upon one contract, for one price. In such cases each is held liable for the whole distance." Instances are to be met with in other books of a similar latitude in the use of the term *special contract*, as in 2 Redf. on Railways 104, where the term *special contract* is used, but the example given is of a contract implied from certain facts. For these reasons we are not inclined to regard *Perkins* v. *The Railroad*, as a direct and final decision by the courts in Maine of the question raised in the present case.

In *Nutting* v. *The Connecticut River Railroad*, 1 Gray 502, the Supreme Court of Massachusetts decided that "a railroad corporation receiving goods for transportation to a place beyond the line of their road on another railroad which connects with theirs, but with the pro-

prietors of which they have no connection in business, and taking pay for transportation over their own road only, are not liable, in the absence of any special contract, for loss of the goods after their delivery to the proprietors of the other road." This could hardly be regarded as an authority for the defendants in the present case; and I find nothing in the opinion of the court, which carries the doctrine of the case beyond the statement of the head note. But in later cases the rule has been established in Massachusetts that a carrier is not bound for the transportation of goods beyond his own line in the absence of a positive agreement to that effect. In *Darling* v. *The Boston & Worcester Railroad*, 11 Allen 295, it was decided that if an arrangement is made between several connecting railroad companies, by which goods to be carried over the whole route shall be delivered by each to the next succeeding company, and each company receiving them shall pay to its predecessor the amount already due for carriage, and the last one collect the whole from the consignee, a reception of such goods by the last company, and payment by it of the charges of its predecessors, will not render it liable for an injury done to the goods before it received them." From this case the general rule has been deduced in Massachusetts that a carrier is not liable for loss beyond his own line without a *positive agreement* to be so liable; though some of the discussion in *Darling* v. *The Railroad* seems hardly consistent with such a rule, for the learned judge who delivered the opinion says "the usage as to the manner of doing the business enters into the contract as part of it, in the absence of an express contract. But the convenience of commerce makes it highly useful to send goods to distant places which can be reached only by independent lines of transportation. It is important that this business should be accommodated; and this may be done by express agreement or *established usage*. It is frequently done in this country by agreements made by the proprietors of connecting lines with each other; and this is much better than to leave any important matter of this kind to be settled by usage. When such arrangements are made the liability of each line is to be determined by a fair construction of their terms." That is to say, usage enters into the contract on which the goods are carried for the owner; but when the business is done on the connected line by an agreement among the parties to it, the liability of the different parties to the owner for the transportation of his goods is to be determined by a fair construction of the terms of the agreement among the parties to the connecting line; and the contract on which the goods are carried is inferred from usage, or from the arrangements among the parties to the connected line, and in such case does not depend on any positive agreement between the owner of the goods and any one of the carriers.

We have been furnished with a manuscript copy of the opinion in *Goss* v. *The New York, Providence & Boston Railroad*,[1] in which on facts that we cannot distinguish from the present, the court held that the point was settled by the prior decisions in Massachusetts, especially by the case of *Darling* v. *The Railroad*, and declined to discuss the general question further. And in the case of *Burroughs* v. *The Norwich & Worcester Railroad*, decided in September, 1868, we have also

[1] Since reported, 99 Mass. 220.

been furnished with the opinion of the court holding the law to be well settled in Massachusetts that a corporation established for the transportation of goods over a line between certain points and receiving goods directed to a more distant point is not responsible beyond the end of its own line, unless it makes a positive agreement extending its liability. And this rule, if a newspaper report can be trusted, was lately applied in *Pendergast* v. *The Adams Express Company*, by the same court to the case of an express company that gives a receipt for money directed to a place beyond the line of the company that gives the receipt.

It has been said that the English rule on this subject has not been generally adopted in this country. A review, however, of the American cases shows but too plainly, that if our courts have differed from the English, they are far from agreeing among themselves in any principle or doctrine that can be called the *American rule.* There is not only much confusion, but no little conflict in the American authorities. A large proportion of them are not directly in point for the present case, which must be decided on the facts found by agreement of the parties.

The following are the facts and circumstances from which the contract between these parties must be inferred:

The three corporations were engaged as common carriers in the transportation of goods in a connected line between Nashua and New York, under an agreement among the parties to the connected line.

In the present instance, and generally under the agreement, one price was paid for transportation through.

The freight-money was divided among the parties to the connected line in proportions fixed by their agreement.

The goods were received by the defendants for transportation on the connected line marked for New York.

The legal inference from the general statement of the agreement is that the parties to the continuous line were bound by their mutual contract to take from each other and carry through goods so marked, that might be received by any one of them.

The price for transportation to New York was paid to the defendants, when they received the goods.

The American authorities are comparatively few, which hold that when all these circumstances concur, the carrier who receives the goods is not bound, by an implied agreement, to carry them, or see that they are carried, over the connected line to their final destination. I do not find that the decisions in any of the states sustain this defence, except in Connecticut, Maine, and Massachusetts.

With regard to the cases in Connecticut, it cannot imply any want of the respect due to the courts of that state, if I say that for two reasons their cases on this point are not entitled to all the deference that is paid to their decisions on other subjects. In the first place, it is held there that railroad corporations have no corporate authority to contract for the transportation of goods or passengers beyond their own lines; a doctrine rejected everywhere else. If it were admitted that railroads had the power to make such contracts, it does not appear that the courts in Connecticut would have decided that the plaintiff in a case like this would not be entitled to recover. Indeed it would seem from the opinion of the court as delivered by Ellsworth, J., in *Elmore* v. *The Naugatuck Railroad*, 23 Conn. 457, that in Connecticut these defend-

ants would be held liable if their power to contract were conceded. He says "no money was paid, or agreed to be paid, for conveying the leather to any specific place. There was no evidence or claim that there was any connection between the defendants and the steamer, except in the customary way of forwarding freight they delivered the goods to each other from time to time as they were marked for transportation, no matter to what place, whether to New York, California, Europe, or Asia. It is obvious that where the different carriers throughout the route are connected in business by some joint undertaking or partnership, there can be no difficulty in case of a loss which happens on any part of the line; but the question arises, where this is not the case, what is the law then?" From this it seems to me that we are warranted in supposing, if the defendants had power to contract and the facts had been such as are found in the present case, the court in Connecticut would have no difficulty in charging the defendants for a loss happening in any part of the line. Then again these decisions in Connecticut were by three judges against two; WAITE, then Chief Justice, and HINMAN, who has since filled that place. The reasons for holding the defendants liable in *Elmore* v. *The Railroad* are very ably and forcibly stated by WAITE, C. J., in his dissenting opinion. Such dissent, it is evident, leaves the authority of the cases so much reduced that they cannot be entitled to great weight out of the jurisdiction in which they were decided.

The single case of *Perkins* v. *The P. S. & P. Railroad*, for reasons before suggested, we cannot consider as a final settlement of the question in Maine.

But in Massachusetts the court in a series of decisions have established the rule that a carrier, though associated with others in a connected line of transportation, is not liable for a loss happening beyond his own line without a positive agreement to that effect; and this rule is applied to the baggage of passengers, and the undertaking of express companies that receive goods for transportation beyond their own lines. The fact that notwithstanding the earlier decisions, suits have continued to be brought in that Commonwealth against parties that have received goods to be transported on continuous lines for losses happening beyond their own lines, might seem to suggest a suspicion that the profession and the public had not readily acquiesced in the rule as there laid down; but the court have adhered firmly to the rule, and in some of the later cases have apparently declined to enter on the discussion of the question, treating it as finally settled; and we must therefore consider the high authority of that court as against the right of the plaintiffs to recover in this action. So far, however, as that court may be understood to have established the rule that to bind a railroad for transportation beyond its own line there must be an express and positive agreement between the railroad and the owner of the goods, and that such an undertaking is not to be implied from facts such as are found in this case, the current of American authority, to say nothing of the English, appears to be strong the other way. Excepting the cases in Connecticut and Maine, which, when examined, do not, I think, give the Massachusetts doctrine any very strong support, the authorities in other states, though they differ much in other particulars, generally agree in this, that where, as in the present case, there is a continuous line of different carriers united

by an agreement under which they carry goods through the connected line for one price, which they divide among themselves in proportions fixed in their agreement, if one of the parties receiving goods to be transported on the continuous line, marked for any place in it, and on receiving the goods takes pay for transporting them to that place, the party so receiving the goods and the pay for transportation, is *primâ facie* bound by an implied agreement to carry the goods, or see that they are carried to the place for which they are marked, and is liable for a loss happening on any part of the connected line.

If the cause were to be considered on authority only, we should feel bound to decide for the plaintiffs, inasmuch as we find the weight of authority to preponderate heavily in their favor; and taking general principles and reasons of convenience and public policy for our guide, we are led to the same conclusion.

In the view which the plaintiffs ask us to take of this case, when the goods were received by the defendants, marked for transportation to New York, and the price paid to the defendants for transportation through on the continuous line, the plaintiffs made one contract with the defendants, by which the defendants agreed, either as joint carriers with the other associated parties, or as undertaking for them to carry the goods through for the price paid, as goods were carried in the usual course of the business on that line. In that view the plaintiffs would have nothing further to do in the matter. Everything else was provided for by the agreement among the associated carriers; for by their agreement the defendants were bound to transport and the successive carriers would be bound to take and carry the goods from each other to their final destination. The price through was paid, and belonged to the different carriers in proportions fixed by their agreement; and this theory would agree exactly with the facts; for the plaintiffs in fact made but one agreement with one party to have the goods carried for one price to New York. No further stipulation or direction on the part of the plaintiffs was necessary, and none was ever in fact given by owners of goods who put them in the course of transportation, as these were put, in the continuous line.

According to the defendants' theory of the case, when the plaintiffs delivered the goods marked for New York, and the defendants received them and took pay for transportation through, no contract was made with any party to carry the goods through; but the contract then made by the defendants was to carry the goods to the next carriers on the connected line with the surplus money, and as agents of the plaintiffs make a contract if they could with the next carriers to take the goods and the money and carry them on in the same way through successive agencies for the plaintiff to their final destination. If these agents should consent to act for the plaintiffs, and be able to negotiate bargains with the other carriers for transportation through, the goods would go to New York as was intended; but they would go under three separate contracts made at different times through this imaginary agency with three different and independent parties.

The first objection to the defendants' theory of this transaction is that it is contrary to the fact. The owner of goods in a case like this does not in fact appoint or employ the successive carriers in the continuous line as his agents to hold his money for him, and as his agents carry it

forward and contract in his behalf with the other roads for further transportation. He makes but one contract for one price; he pays the price, and the money he has paid does not belong to him, but to the associated carriers in proportions fixed by their agreement. He does not inquire, nor is he interested to know, how they divide the money. The contract is entire and complete when he pays the price for transportation through, and everything to be done afterwards is regulated by the standing agreement among the associated carriers. He has no control over them as his agents; he does not and cannot intermeddle with the manner in which they do the business or dispose of the money that he has paid for the carriage of his goods.

Let us see what are some of the consequences that would follow, if both parties in a case like this should act on the defendants' view of their legal rights. Suppose in this case the goods had been carried through to New York, and the defendants had not paid to the next carriers the proportion of the freight-money which belonged to the other carriers; and then suppose that the Norwich & Worcester Railroad should sue the plaintiffs for carrying the goods over their road. It would avail the plaintiffs nothing to say that they had paid the freight through when the goods were received at this end of the route. The ready answer would be: "To be sure, you put money into the hands of your agents, the Worcester & Nashua Railroad, to pay us, but they neglected their duty; your money is still in their hands, and we are not paid." It is, however, quite clear, that the money received by the defendants for transportation through on the connected line would be held by them for all the parties to the line; they would be bound to account for it under their agreement as one partner accounts with his fellows for money received on partnership account. Then if the plaintiffs should undertake to pay the different carriers, how are they to know the share of each? The proportions of the freight-money belonging to them respectively are regulated by a private agreement of which the plaintiffs know nothing, and of which in the way the business is actually conducted they have no need to be informed. If the plaintiffs had proposed when they delivered the goods to pay the Worcester & Nashua road their proportion of the freight-money and afterwards to pay the other carriers their respective shares, they probably would have found nobody to tell them what the different shares were, or to receive the goods to be carried on such terms. In truth the connected line transacts business as one joint concern, and the business cannot be transacted otherwise with convenience either to the carriers or the owners of the goods.

Then if we look to the remedy of the associated carriers for the recovery of the freight-money, each, on the theory of the defendants, must bring a separate suit on the separate contract for his proportion of the money. We have had occasion to learn from the facts stated in another case now pending before us that there is a connected line consisting of six or seven different railways extending from Ogdensburg in New York through Vermont and New Hampshire to Boston in Massachusetts, in which one price is paid for transportation through and the money divided by a standing agreement as in this case. If goods are carried through on this route, and there are six or seven different contracts, one with each road, then each road must bring a separate action for its share of the freight-money. If it should be said that the remedy

of the roads is to retain the goods at the end of the route till the whole price for transportation through is paid, this, in the first place, would show that these roads are so combined that for their own purposes they are a unit, while they insist that they are wholly separate and independent when the owner seeks redress for the loss of his goods. And then again, if the roads act separately and are not jointly interested in the business of the connected line, when one of the roads parts with the possession of goods by delivery to another, it loses its lien for the freight-money, and cannot transfer it to another independent carrier: Angell on Carriers 357, 359, 609. This is not at all like the maritime lien, when a voyage is broken up and the cargo is put on board another vessel to be carried to the port of destination. There the lien on the cargo for the whole freight is transferred to the second vessel, which completes the transportation under one contract.

The use of steam in carrying goods and passengers has produced a great revolution in the whole business. The amount and importance of it have of late vastly increased and are every day increasing. The large business between different parts of the country is done, as in this case, by parties who are associated in long continuous lines, receiving one fare through and dividing it among themselves by mutual agreemont. They act together for all practical purposes so far as their own interests are concerned as one united and joint association. In managing and controlling the business on their lines they have all the advantages that could be derived from a legal partnership. They make such an arrangement among themselves as they see fit for sharing the losses, as they do the profits that happen in any part of their route. If by their agreement each party to the connected line is to make good the losses that happen in his part of the route, the associated carriers, and not the owner of the goods, have the means of ascertaining where the losses have happened. And if this cannot be known, there is nothing unreasonable or inconvenient in their sharing the loss, as in case of a legal partnership, in proportion to their respective interests in the whole route.

They undertake the business of common carriers, and must be understood to assume the legal liabilities of that business. They transact the business under a change of circumstances; but the principles and the general policy of the common law, which, as an elementary maxim, holds the common carrier liable for all accidental losses, must be applied to these new methods of transacting the same business; and there is certainly nothing in the present condition of the business, which calls for any relaxation of the old rule. The great value of commodities transported over these connected lines; the increased risk of loss and damage from the immense distances over which they carry goods; the fact that where goods are once intrusted to carriers on these long routes they are placed beyond all control and supervision of the owner; are cogent reasons for holding those who associate in these connected lines, to a rule that shall give effectual and convenient remedy to the owner, whose goods have been lost or damaged in any part of the line. Any rule, which should have the effect to defeat or embarrass the owner's remedy, would be in direct conflict with the principles and whole policy of the common law.

What then is the situation of the owner, whose goods have been

damaged or lost on a continuous line of three or any larger number of associated carriers, if he can look only to the carrier, on whose part of the route the damage may have happened? In the first place he must set about learning where his loss happened. This would often be difficult and sometimes quite impossible. Suppose an invoice of flour shipped in good order at Ogdensburg were found on arrival at Boston to have been damaged somewhere on the route; or suppose a trunk checked at Boston for Chicago was broken open and plundered before it reached Chicago, what would the owner's chance be worth of finding out in what particular part of the route the damage happened? He would have no means of learning himself; and he would not, unless of a very confiding disposition, rely on any very zealous aid in his search from the different carriers associated in the connected line. And if he should have the luck to make the discovery, he might be obliged to assert his claim for compensation against a distant party, among strangers, in circumstances such as would discourage a prudent man, and induce him to sit down patiently under his loss rather than incur the expense and risk of pursuing his legal remedy under the rule set up by these defendants. The forlorn condition of the owner in such a case is put in a strong light by WAITE, C. J., in his dissenting opinion, *Elmore* v. *The Naugatuck Railroad*, 23 Conn. 478, where he says: "A merchant residing in Cleveland, Toledo, or Chicago, purchases goods in the city of New York, which he wishes to send to his place of business. He enters into a contract with a railroad company for their transportation, not to any given point on the route, but for the whole distance. He delivers the goods to the company and they are taken and locked up in freight cars. He does not accompany them, and often sees and hears nothing more of them until they are delivered to him at their place of destination. The cars in which they are placed are often run over roads belonging to different companies to save trouble and expense of change of cars. If the goods are lost or damaged on the route he ordinarily has no means of determining where or in whose custody the injury occurred. The trouble and expense of ascertaining that fact in many cases would amount to more than the whole damage. As a prudent, cautious man he would be unwilling to intrust his goods to the custody of others, unless he could find some person or company that would be responsible for their safe delivery." The remarks of SMITH, J., 34 New York 501, before cited, are of the same import, showing the difficulties and embarrassments of the owner, if he can only resort for compensation to the carrier in the connected line, on whose part of the route the damage happened.

A rule, which throws such difficulties in the way of the owner who seeks to recover of common carriers for the loss of his goods, I cannot but regard as a wide departure from the general doctrine of the common law on this subject; and nothing is plainer than the duty of courts to apply the general principles of the common law to the new circumstances which are introduced by changes in the manner of transacting any business.

Few things are of greater importance to the whole country than the cheap, convenient, and safe transportation of goods between distant points. Vast sums of money are expended to promote this object. The business is already immense and constantly increasing. Most of this

business is done on connecting lines of railroads and steamboats, and these by continuous lines have a practical monopoly of the business on their respective routes. The owner of goods must intrust them to these associated carriers; they cannot be carried in any other way. Not only those who are engaged directly in carrying and sending goods are interested in this subject; all who produce and all who consume are interested that goods should be carried as cheaply, as conveniently, and as safely as possible. Public policy and the public interest concur with the general maxim of the law that those who transact this great business, should be held to a rule which shall give a ready and effectual remedy to the owner whose goods have been lost or damaged in any part of these connected lines of transportation.

There is a perplexing diversity of decision on this subject, in the different tribunals of this country. For instance, by the law of New York, as we understand it to be established by the construction which the courts have given to their statute, if goods are received in that state for transportation through on a connected line of railroads, the road that receives the goods is liable for loss or damage happening in any part of the connected line, though beyond the limits of the state: *Burtis* v. *The Buffalo & State Line Railroad*, 24 N. Y. 269. As has been before mentioned, there is a connected line of six or seven railroads extending from Ogdensburg to Boston. If goods are received by the Ogdensburg Railroad for transportation to Boston, and are lost or damaged on any part of the line, say on the Lowell Railroad, the Ogdensburg Railroad is liable for the loss. But if merchandise is received at Boston by the Lowell Railroad for transportation to Ogdensburg over the same connected line of railroads associated under the same agreement, the owner would be left to find out, if he could, on which of the six or seven connected roads his goods were lost or damaged, and could claim for his loss of that road alone. There would seem to be no remedy for this confusion and conflict of decisions unless the national legislature can provide one under the power given by the constitution to regulate commerce.

I come to the conclusion that on the case stated the plaintiffs are entitled to recover; and such is the unanimous opinion of the court.

The foregoing case is one of importance and interest, both to the profession and to business men, at this particular juncture, when the necessities of transportation are driving railway companies into the creation of extended lines of passenger and goods traffic, and when there continue to be such irreconcilable differences in the decisions of the different states in regard to the rights and responsibilities of the respective parties. The whole subject is so fully presented in the opinion, and the cases so extensively commented upon, that we should not feel justified in going over the same ground.

It has seemed to us that much of the apparent conflict in the decisions upon this subject might be measurably reconciled by defining, more carefully and exactly, the precise grounds upon which a contract for transportation beyond the line of the first carrier will be implied. It would scarcely do to refer the matter to the determination of the jury, in each particular case. That would be likely to produce too much uncertainty for practical convenience. The great argu-

ment in favor of the English rule, as declared in *Muschamp* v. *Lancaster and Preston Railway*, 8 M. & W. 421, and other subsequent English cases is, that it establishes a fixed and definite rule, and one that meets, fairly enough, the practical convenience of the public. But that is not all that is to be sought after. We must, and should have some reference to the public duties of common carriers and what those who employ them may fairly demand of them. It is very obvious that carriers, for their own protection, and to extend their business, would naturally desire to conduct it upon such principles, as to afford reasonable and just accommodation to their employers. And it seems but reasonable and just that all judicial constructions should be made in the same direction and with the same end in view. And we by no means intend to intimate that this has not always been the case in the decisions bearing upon this subject, and as affecting the numerous incidental questions involved. But it has seemed as if that consideration might safely have been permitted, in some cases, to have had a more controlling influence than was allowed. We comprehend, well enough, that a fixed rule made by declaring a hard and fast line and steadfastly adhering to it, with no reserve or qualification, is sometimes supposed to save courts a vast deal of perplexity, which a sliding scale or rule, more or less resting in discretion, would be almost sure to produce and to multiply almost indefinitely. And still too great, or too strict, adherence to abstract rules is sure to produce injustice in extreme cases. It seems to us, if we must have a fixed rule, that the English rule upon this subject is more just and more practicable, than any inflexible application of the rule of limiting responsibility to the line of the first company can be made; and especially where there is an acknowledged business connection between the different companies.

It is not always easy to define precisely what connection between different companies, in the transportation of goods, shall bind the first company throughout the line. But in a case like the principal one, where the goods are billed through, and the entire freight paid, there should, it would seem, be no question that such facts should be regarded as evidence of an express contract to carry through. There can be no doubt the parties to such a transaction ordinarily so regard it. It is a forced and unnatural construction to regard it in any other light. The consignor in no sense regards the agent of the first company as contracting in the capacity of agent for the successive companies, but as the agent for the first company, whose agent he is, and whose agent only. The case of *Schneider* v. *Evans*, 9 Am. Law Reg. N. S. 536, is of this character, and the erroneous conclusion of the court in that case was brought about by attempting to give the transaction the forced and unnatural construction of allowing the successive companies to demand more than their proportion of the entire sum stipulated by the first company for the entire freight. How much less than this shall be held as amounting to an express contract to carry through, it will not, at once, be easy to determine. But the exigencies of business and the experience of the courts will, from time to time, enable us to fix and define the proper limitations. The case of *Darling* v. *Boston and Worcester Railroad*, 11 Allen 295, fell very much short of this, and the court held the facts in that case not inconsistent with separate responsibility.

In *Boroughs* v. *Norwich and Worcester Railroad*, 100 Mass. 26, there was nothing more than in the next preceding case, upon which to found an implication

of an undertaking for the entire route, except the tariff of freight posted in the office of the first company, which gave the through rate in one item, without distinguishing the particular rate of the separate companies. This alone would not be very conclusive of an undertaking to carry through. But the difficulty was, in this particular case, if so applied, that the bill contained an exception of the very risk upon which the loss occurred, and would, therefore, be fatal to the plaintiff's case, if made to form the basis of responsibility. But the case of *Gass* v. *New York, P., and B. Railroad*, 99 Mass. 220, did contain the feature of charging through freight, and the court held it not sufficient upon which to imply an undertaking for the entire route on the part of the first company. But we think the principal case must be regarded as having established, upon most unquestionable grounds, the rule that the first company of a continuous line of transportation receiving goods and accepting the freight through and giving a bill through, must be understood as undertaking for the entire route, unless there is something in the bill of lading, or receipt, or other documents referred to as part of the contract, to indicate a different understanding, or unless the usages of the business or the custom of the line known or accessible to the knowledge of the shipper, show that such was not the expectation of the parties. Starting from this safe point, and assuming that in the absence of all business connection between the different lines, the responsibility is several as to each company for its own defaults only, we trust the courts will hold such a judicious control over the construction of different classes of contracts upon this subject as to reach the actual or probable justice of each particular class. But it will not be easy to define, in advance, precisely how much weight shall be given to each particular feature in a transaction, or what particular facts or circumstances shall be held decisive in regard to the first company being, or not being, holden throughout the line.

The tendency in this country is unquestionably in the direction of extended lines of transportation, either by actual consolidation of stock, by leases, or by some business arrangement, more or less stringent. And with this tendency we must expect a corresponding tendency towards holding the first company bound for the entire transportation. And it would seem not unreasonable where there is a fixed business connection throughout the line, that the first company should be holden to the extent of such business connection. It is certainly much easier for the first company to obtain indemnity from its associates than for the shipper to seek it of strangers, which all the subsequent companies must be regarded as to him. And it would seem far more just to hold the first company responsible for the defaults of its associates than to hold that the shipper must find evidence to make his case against them, when it is so easy for them to cover it up by means of the facilities growing out of the very association.

If we ever reach the point towards which we have been drifting from the first establishment of railways in the country, of regarding them as a part of the commerce between the different states, and as much subject to the national control as the commerce which is carried on by means of navigation upon the ocean, through the numerous bays and inlets along the coast, we may expect something more definite, either by way of legislation or judicial construction upon the important questions here involved. How long we shall be doomed to endure the embarrassments resulting from local legislation and conflicting judicial constructions upon this and numerous other embarrassing questions connected with railway traffic it is im-

possible to predict. But this we must be prepared to expect, and to meet, that the dread of centralization will cause the national courts and Congress to hesitate and temporize upon those points which most seriously and most obviously demand a firm hold and unflinching action at their hands, and which are really justified upon the most obvious and the most indubitable grounds, while the advance is constantly being pushed in the same direction by insidious and covert movements, without purpose and without observation, but through the silent pressure of popular will and the irresistible progression of growth and development. It will thus happen, as it always does, that the courts and the legislature will not take the initiative in the most essential and imperiously demanded reforms, so far as truth and justice is concerned, until the barriers of precedent and custom are undermined by other and more popular movements, which are not supported by any such array of argument. But that it will come, in the end, there can be no question. But not, perhaps, until after the common schools and the insurance companies have all become national, and many other present state institutions, in regard to which there is not one tithe of the need, and none of the reason, for making national, that there is the railway traffic. But the public can wait, and it must wait, but with the comfortable assurance that, at the worst, it is but a question of time. I. F. R.

LEGAL NOTES.

RECENT ACTS OF CONGRESS.—Mr. B. V. Abbott, one of the commissioners to revise the United States statutes, at Washington, furnishes us a condensed statement of the more important acts passed by the session of Congress just closed, from which we select the following:—

An act to amend an act, approved May 31st 1870, entitled "An act to enforce the rights of citizens of the United States to vote in the several states of this Union, and for other purposes." Approved February 28th 1871.

This act contains provisions of increased stringency, protecting the elective franchise.

It makes the fraudulent evasion or violation of the registry laws of the states and territories, in the election of representatives and delegates to Congress, a crime.

The judge of the United States Circuit Court for the circuit in which a town or city of above twenty thousand inhabitants is situated, may, upon application, appoint two supervisors of election; and also appoint a chief supervisor of election from among the Circuit Court commissioners of that circuit; and the duties of each are defined. Deputy marshals are to be appointed by the United States marshals, upon application.

Jurisdiction, in all cases arising under this act, is conferred upon the United States Circuit Courts, and a provision is made for the removal of such causes, when commenced in a state court, to the Circuit Court.

Hereafter all votes for representatives in Congress shall be by written or printed ballot.